

## **LAND BOARD AGENDA ITEM**

November 17, 2008

### **REQUEST FOR FINAL APPROVAL OF THE Department of Commerce Transfer of the Malta Dinosaur Museum to the City of Malta**

**REQUEST:** The Department of Commerce requests final approval for transfer of the Great Plains Dinosaur Museum to the City of Malta.

**LOCATION:** The street address is 405 1<sup>st</sup> East Street. Legal description: Lot 7 in Block 2 of the Original Townsite of Malta, Phillips County, Montana, according to the official recorded plat thereof. EXCLUDING there from the East 50 feet of Lot 7 in Block 2 of the Original Townsite of Malta, Phillips County, Montana, according to the official recorded plat thereof. Reference Document: Contract for Deed recorded in Book 29 of M.R.E. pages 192-193.

**BACKGROUND:** House Bill 423, passed during the 2005 Legislature, appropriated \$500,000 to the Department of Commerce *"to purchase the land and purchase and construct a facility for a park in Malta, Montana, to display the products of paleontological research in the area and to provide research facilities for paleontologists and complete necessary building upgrades. The Department of Commerce may lease the property to a private, nonprofit entity for the purpose of operating the park."* The facility was subsequently built, and the Department is currently leasing that facility to the private, non-profit Judith River Foundation for operation and maintenance.

**AUTHORITY:** §77-2-351, MCA, authorizes the Board of Land Commissioners to dispose of, sell, or exchange certain state lands for less than market value, if the receiving entity makes a binding commitment to use the property to provide a community service or a benefit that fulfills a public purpose.

**PROPOSAL:** The Department would like to turn the facility over to a local governmental entity, the City of Malta. The Land Board preliminarily approved the proposal at its meeting on September 15, 2008; the Department consulted with the Legislative Council concerning the proposal on September 16, 2008. The Department prepared an environmental assessment (EA) regarding the proposed transfer and made it available on the Department's website, with public notice on the state e-calendar, for public review and comment from September 9 through October 31, 2008. In addition to the website public notice, the Department arranged for a public notice of the proposal to be published in the *Phillips County News* on October 15, 2008. Only one letter was received by the Department on the EA, from the State Historic Preservation Office, with a notation that "[n]o properties on or eligible for NRHP [National Register of Historic Properties] appear likely to exist within project impact area."

Based on the evidence, the Department of Commerce prepared a finding that the proposed transfer of the Great Plains Dinosaur Museum from the State of Montana to the City of Malta would not be a major action significantly affecting the quality of the

human environment for the purposes of the Montana Environmental Policy Act (Sections 75-1-101 et seq., MCA).

The Department also commissioned an appraisal of the property, which estimated the value of the real property at \$850,000.

The Department has placed a reversionary clause on the deed that requires the property to be used for a public purpose or it will revert to the State. In addition, the Department has drafted a Real Property Agreement between the State and the City of Malta that details the requirements for operating and maintaining the museum for a public purpose of displaying the products of paleontological research in the area and to provide research facilities for paleontologists. The Agreement provides, among other things, that any lessee of the museum – including the Judith River Foundation – must appoint a member of the City to the lessee's governing Board.

**BENEFIT TO THE STATE:** The Department believes that ownership of the Great Plains Dinosaur Museum should be transferred to the City of Malta. The Department has no funds or staff available to assure maintenance of the facility, and the distance to the facility from Helena, 292 miles, makes effective oversight difficult. Along with the Board of Directors of the Judith River Foundation, the City of Malta has been a willing and eager partner in the development the Great Plains Dinosaur Museum from the initial inception of the idea. The museum is a major tourist attraction and a benefit to the local business community. It is in the interest of the State to see that the facility is properly maintained for the long term and the Department believes that the City of Malta will be a good steward of this public investment.

In addition, Foundation members have stated that they believe that local ownership of the museum could help them in their fund raising efforts with potential private donors and foundations. Ownership by the State of Montana implies to some potential donors that the Museum has greater financial resources than is actually the case. Notably, many state and federal grant programs are geared to local partnerships between private enterprise, non-profit organizations, and local government. It will benefit the State to encourage as much private investment in the facility as possible for proper long-term operation of the museum and the effective display of its important paleontological exhibits.

**AGENCY RECOMMENDATION:** The Department believes this proposed land transfer would benefit the Department and the State of Montana. The Director of Commerce recommends that the Land Board grant final approval of the transfer of this property to the City of Malta.

# MONTANA

Department of Commerce

Anthony J. Preite, Director

301 S. Park Ave. \* P.O. Box 200501 \* Helena, Montana 59620-0501  
Phone 406-841-2700 \* Fax 406-841-2701 \* TDD: 406-841-2702 \* <http://commerce.mt.gov>

TO: Whom It May Concern  
FROM: *Anthony J. Preite*  
Anthony J. Preite, Director  
Montana Department of Commerce

DATE: November 3, 2008

SUBJECT: Environmental Finding for the Transfer of the Great Plains Dinosaur Museum to the City of Malta, Montana

House Bill 423, passed during the 2005 Legislature, appropriated \$500,000 to the Department of Commerce in HB 423 *"to purchase the land and purchase and construct a facility for a park in Malta, Montana, to display the products of paleontological research in the area and to provide research facilities for paleontologists and complete necessary building upgrades. The Department of Commerce may lease the property to a private, nonprofit entity for the purpose of operating the park."*

The Department of Commerce worked closely with the Board of the Judith River Foundation of Malta in selecting a site for the dinosaur museum. From the beginning, there was a consensus that the preferred location for the museum would be adjacent to U.S. Highway 2 to assure maximum accessibility and visibility for the traveling public. With the assistance of Bruce Davidson, Project Architect with CIVIC Design in Great Falls, the Foundation Board selected a preferred site immediately west of the Phillips County Historical Museum on Highway 2.

The Department of Commerce published an Environmental Assessment for the proposed acquisition of the site and the construction of the Great Plains Dinosaur Museum in February 2007 and solicited comments from key environmental agencies and the public. No adverse comments were received. In March 2007, the Department prepared a finding that the purchase of the site and the proposed construction of the Great Plains Dinosaur Museum would not be a major action significantly affecting the quality of the human environment for the purposes of the Montana Environmental Policy Act (Sections 75-1-101 et seq., MCA).

The Architecture and Engineering Division of the Department of Administration, under State Architect Tom O'Connell, supervised the selection of the architect, project design, construction bidding, and the actual construction. Construction of

BRIAN SCHWEITZER, GOVERNOR

the building was completed in April 2008. The building and lot were appraised at a value of \$850,000 in October 2008.

In May 2008, the Department of Commerce signed a lease agreement with Judith River Foundation of Malta for operation and maintenance of the Great Plains Dinosaur Museum for one dollar per year. The Foundation is responsible for insuring the museum and all operating costs.

Thereafter, the City of Malta approached the Department of Commerce about the possibility of the City acquiring the Museum. The Malta community already has a strong commitment to the Museum; they conceived of the idea and successfully pursued state funding from the Legislature. Local volunteers staff the Museum. The City provided in-kind contributions of city crews and gravel to help construct the building and the parking facilities. The community has an obvious self-interest in seeing that the facility is properly maintained because it is a tourism asset for them.

If the State Land Board approves the proposed transfer of the museum to the City, the City would lease the museum to the Judith River Foundation in the same manner as the Department of Commerce is now leasing it. Just as under the current lease, the Foundation would be responsible for insuring and maintaining the facility.

The Foundation believes it has the resources to maintain the Museum for the long term, with the boost in income it will receive from the Houston Museum of Natural Science exhibition of Leonardo, the publicity it is getting through a Discovery Channel special on the Malta area discoveries, and the doubling of visitation it has experienced in 2008. It successfully operated and maintained the former Dinosaur Field Station facility for four years and believes it will have the resources to properly maintain the Museum into the future. The City of Malta is willing to help if the Foundation encounters any difficulty, but that is not anticipated.

The Department of Commerce has carefully considered the Environmental Assessment (EA) for the transfer of the Great Plains Dinosaur Museum from the Department to the City of Malta. The EA was prepared by Anne Boothe, Executive Director of PhillCo Economic Growth Council of Malta; Bruce Davidson, Project Architect with CIVIC Design in Great Falls; and Dave Cole, Administrator of the Department's Community Development Division. The EA was made available for review on the website of the Montana Department of Commerce from September 9 through October 31, 2008. The Department sent letters to potentially concerned agencies regarding the proposed transfer and the EA on October 8, 2008. The Department published a public notice regarding the availability of the Environmental Assessment on the State E-Calendar from September 9 through October 31, 2008 and in the *Phillips County News* of Malta, Montana on October 15, 2008. Only one letter regarding the EA was received by

the Department, from the State Historic Preservation Office, with a notation that "[n]o properties on or eligible for NRHP [National Register of Historic Properties] appear likely to exist within project impact area."

Based on the evidence, the Department of Commerce finds that the proposed transfer of the Great Plains Dinosaur Museum from the State of Montana to the City of Malta would not be a major action significantly affecting the quality of the human environment for the purposes of the Montana Environmental Policy Act (Sections 75-1-101 et seq., MCA).

RICHARD J. CASSUTT, GAA  
REAL ESTATE APPRAISER & CONSULTANT  
P. O. Box 1418 / Fort Benton, MT 59442

General Certified Appraiser  
Montana Certificate #25  
Phone/Fax: 406-622-5271

October 12, 2008

Mr. David C. Cole, Administrator  
Community Development Division  
MONTANA DEPARTMENT OF COMMERCE  
Box 200523  
Helena, MT 59620-0523

Re: Great Plains Dinosaur Museum, Malta, MT Appraisal

As requested, I have made an investigation and appraisal of the new building totaling 3000 square feet situated on 27500 square feet of land adjacent to Main Street East in Malta, Montana. This opinion of value is based on the data and analysis contained in the attached report. The effective date of this report is October 2, 2008, the date of my most recent inspection. The appraisal considers the property as being held in Fee Simple.

Based upon my investigation, study and analysis, I have concluded the described property has a market value of:

\*\*\*\*\*Eight Hundred Fifty Thousand Dollars\*\*\*\*\*  
\*\*\*\*\* \$850,000. \*\*\*\*\*

Market Value conclusions are reached based on the definition as stipulated by FIRREA. Please see page six for the official definition. The conclusion is subject to the conditions outlined in the Appraisal Certificate and the Statement of Limiting Conditions. The property is here in appraised as a special use building.

Thank you for the business.

Sincerely,  
  
Richard J. Cassutt, GAA, CGA

After Recording Return to:  
Kelly A. Casillas, Legal Counsel  
Montana Department of Commerce  
P.O. Box 200501  
Helena, MT 59620-0501

### **QUIT CLAIM DEED**

THIS INDENTURE, made the \_\_\_\_\_ day of \_\_\_\_\_, 2008, between the State of Montana, acting by and through the Montana Department of Commerce, of P.O. Box 200501, Helena, MT 59620-0501 ("Grantor"), and the City of Malta, of P.O. Box 1300, Malta, MT 59538 ("Grantee").

WITNESSETH: That the Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration, lawful money of the United State of America by these presents grant, bargain, sell, convey, warrant, and confirm unto the Grantee, and to its successors and assigns forever, the hereinafter described real estate situated in the County of Phillips and State of Montana, to-wit:

Lot 7 in Block 2 of the Original Townsite of Malta, Phillips County, Montana, according to the official recorded plat thereof.

EXCLUDING therefrom the East 50 feet of Lot 7 in Block 2 of the Original Townsite of Malta, Phillips County, Montana, according to the official recorded plat thereof.

Reference Document: Contract for Deed recorded in Book 29 of M.R.E. pages 192-193.

TOGETHER WITH THE FOLLOWING: All easements, rights-of-way, and other rights of record or apparent from a physical examination of the land, and all permanent installations, improvements, alterations, and additions permanently affixed to the Property.

SUBJECT, however, to any and all exceptions, reservations, and provisions of patents, prior deeds, and right-of-way easements.

PROVIDED FURTHER, in accordance with §77-2-351, MCA, that in the event that the above-described land shall cease to be used for the use, occupancy, operation,

### **QUIT CLAIM DEED**

management, and preservation of the Great Plains Dinosaur Museum to display the products of paleontological research in the area and to provide research facilities for paleontologists for the benefit of the public, as more specifically set forth in the Real Property Agreement concurrently executed by the parties hereto, or cease to be owned by the Grantee, upon written notice to the Grantee by the Grantor, title to the above-described land shall revert to the State of Montana. For the purpose of determining whether a reversion of title is warranted, the parties shall be governed by the terms, conditions, and provisions set forth in the aforementioned Real Property Agreement.

IN WITNESS THEREOF, the Grantor has hereunto set its hand the day and year first hereinbefore written.

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By: Anthony J. Preite, Director  
Montana Department of Commerce



## **REAL PROPERTY AGREEMENT**

### **BETWEEN THE STATE OF MONTANA AND THE CITY OF MALTA**

**THIS AGREEMENT** made and entered into by and between the State of Montana, Montana Department of Commerce ("State"), Helena, Montana, and the City of Malta ("City"), Malta, Montana.

**WHEREAS**, the State is the owner of the property legally described as Lot 7, Block 2, less the East 50 feet of Lot 7, Original Townsite of Malta (hereinafter the "Property"), commonly known as 405 1<sup>st</sup> Street East in Malta, Montana.

**WHEREAS**, the 2005 Legislature authorized the State to lease the Property to a private, nonprofit entity for the purpose of operating a park to display the products of paleontological research in the area and to provide research facilities for paleontologists.

**WHEREAS**, the State is currently leasing the Premises to the private, nonprofit Judith River Foundation on the terms and conditions contained in the Lease Agreement executed May 7, 2008 for the purposes of operating the Great Plains Dinosaur Museum ("Museum");

**WHEREAS**, the State Board of Land Commissioners has authorized the State to sell the Property at less than fair market value to the City solely for the continued public purpose of operating the Museum, as authorized by Section 77-2-351, MCA;

**NOW, THEREFORE**, for and in consideration of the above, the parties hereby agree as follows:

- 1. PURPOSE.** The purpose of this Agreement is to transfer the Property described in this Agreement to the City for the permanent use, occupancy, operation, management, and preservation of the Great Plains Dinosaur Museum to display the products of paleontological research in the area and to provide research facilities for paleontologists for the benefit of the public.
- 2. PROPERTY.** By quit claim deed recorded with this Agreement, the Department hereby sells to the City the real property commonly known as 405 1<sup>st</sup> Street East in Malta, Montana, and legally described as:

Lot 7 in block 2 of the Original Townsite of Malta, Phillips County, Montana, according to the official recorded plat thereof, EXCLUDING therefrom the East 50 feet of Lot 7 in Block 2 of the Original Townsite of Malta, Phillips County, Montana, according to the official recorded plat thereof.

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The Property is subject to all existing right-of-way easements, licenses and permits, whether or not of record, and to all exceptions and reservations of record. The Property includes all permanent installations, improvements, alterations, and additions, including but not limited to ceiling fixtures, flooring, carpeting, rugs, shelving, partitions, and wall coverings permanently affixed to the Property upon execution of this Agreement.

3. **TERM.** This Agreement shall take effect upon execution of the parties, and terminate only in accordance with the terms of this Agreement. This Agreement shall run with the land and be binding on, inure to the benefit of, and be enforceable by and upon the parties and any and all successive purchasers of any interest in the Property whatsoever so long as it remains in effect.
4. **USE OF PROPERTY.** The Property shall be used and occupied by the City or its lessees for the use, occupancy, operation, management, and preservation of the Great Plains Dinosaur Museum to display the products of paleontological research in the area and to provide research facilities for paleontologists for the benefit of the public. The City shall comply with any and all local, state, and federal laws, ordinances, rules, regulations, requirements, applicable to the use, occupancy, operation, management, and preservation of the Property.
5. **LEASE OF PROPERTY.** The parties acknowledge and agree that the City intends to lease the Property to the Judith River Foundation, and that the City may at its discretion lease the Property to another qualifying private nonprofit entity. The parties acknowledge and agree that the Foundation or any other lessee of the Property shall appoint and during the entire term of this Agreement retain an official representative of the City on its governing board. Any leases executed hereunder shall be for the sole purpose of using, occupying, operating, managing, and/or preserving the Great Plains Dinosaur Museum to display the products of paleontological research in the area and to provide research facilities for paleontologists for the benefit of the public, and all lessees shall be subject, at a minimum, to all of the terms and conditions of this Agreement.
6. **CAPITAL ALTERATIONS AND IMPROVEMENTS.** The City may make any and all improvements and changes to enhance the Property for the general public and to fulfill the purposes of this Agreement, as set forth in Paragraph I PURPOSE. The City shall make no alterations to the Property, construct any building, or make any major improvements on the Property that may substantially diminish the value or functional utility of the Property. Any and all alterations or improvements made by the City shall meet or exceed state building codes.
7. **OPERATING COSTS.** The City shall be responsible for arranging for and paying for all utility services, governmental taxes, fees, special assessments, any payments in lieu of taxes, and all other charges assessed against the Property or costs associated with using,

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occupying, operating, managing, and preserving the Property, including, but not limited to, property taxes and lighting district fees.

**8. ADMISSION FEES AND REVENUE:** Fees may be charged to the public for the admission to, use of, or activities on the Property, providing fees are reasonable and equitable to fees charged for like services in the general area. Fees may not be charged that would severely hinder public admission or use.

**9. INSPECTION OF PREMISES.** The State and its agents shall have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the Premises for the purpose of determining compliance with this Agreement.

**10. SURRENDER OF PREMISES.** Upon termination, if any, of this Agreement, the City shall surrender the Premises in as good a state and condition as they were at the commencement of this Agreement, reasonable use and wear and tear thereof and damages by the elements excepted.

**11. INDEMNIFICATION.** The State shall not be liable for any damage or injury of or to the City or their assigns, and the City hereby agrees to protect, defend, and save the State of Montana, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the court costs and attorneys' fees in defense thereof, arising in favor of the City's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the City and/or its officers, agents, employees, representatives, assigns, or subcontractors, except the sole negligence of the State, under this Agreement.

## **12. DEFAULT OF AGREEMENT.**

- A. The following conditions constitute default under this Agreement:
  - 1. Failure of the City, its lessee, or successor in interest to perform or comply with any of the terms, conditions, or provisions of this Agreement; or
  - 2. Failure to use, occupy, operate, manage, or preserve the Property as the Great Plains Dinosaur Museum to display the products of paleontological research in the area and to provide research facilities for paleontologists for the benefit of the public, as set forth in Paragraph 1 PURPOSE.
- B. Upon default of this Agreement, the State shall give the City written notice of the stated failure. The written notice will demand performance of the stated failure within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed within the specified period, the State shall give the City written notice of reversion of the Property to the State.
- C. Within 30 days of such notice of reversion, the City may request a contested case hearing before the State or the State's designee to determine whether the terms of this Agreement have been violated and reversion of the Property is warranted. The State shall be the trier of fact and its decision shall be reviewable by the First Judicial District

## **REAL PROPERTY AGREEMENT**

Court in and for the County of Lewis and Clark, State of Montana, as any other decision under a contested case proceeding under § 2-4-701, et seq., MCA.

- D. If the City fails to request a contested case hearing as set forth in subparagraph (C), or the State determines after a contested case hearing that this Agreement has been violated and reversion of the Property is warranted, this Agreement shall immediately terminate and the Property shall revert to the State as set forth in the notice of reversion. The City shall immediately surrender any right to possession, use, occupation, operation, or management of the Property and the State may seek any other remedies available in law or in equity, or both.

**13. ACCESS TO AND RETENTION OF RECORDS.** The City agrees to provide the State and the Montana Legislative Auditor, or their authorized agents, access to any records necessary to determine compliance with this Agreement. The City agrees to create and retain records pertaining to the use, occupancy, operation, management, and preservation of the Great Plains Dinosaur Museum for a period of three (3) years after the termination, if any, of this Agreement or the conclusion of any claim, litigation, or exception relating to the Agreement taken by the State of Montana or third party, whichever is later. These records will be kept in the City's office in Malta, Montana.

**14. JURISDICTION AND VENUE.** This Agreement is governed by the laws of Montana. The parties agree that any litigation concerning this Agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees except as otherwise specifically provided for herein.

**15. MODIFICATION.** This Agreement shall not be enlarged, modified, changed, altered, or amended in any way except through a written amendment signed by all of the parties hereto.

**16. SEPARABILITY.** A declaration by any court, or any other binding legal forum, that any provision of the Agreement is illegal and void shall not affect the legality and enforceability of any other provision of the Agreement, unless the provisions are mutually dependent.

**17. NO ARBITRATION.** Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Agreement.

**18. NOTICES.** Any written notices, demands, or other communication required under this Agreement shall be delivered (i) in person; (ii) by certified mail, postage prepaid, return receipt requested; or (iii) by U.S. Express Mail or a commercial overnight courier that guarantees delivery within the next two business days. All notices complying with this Section shall be effective upon receipt. Such communication must be addressed to the parties liasons as follows:

**For the Department:**

#### **REAL PROPERTY AGREEMENT**

Dave Cole (or successor)  
Community Development Division Administrator, MDOC  
301 S. Park Ave.  
P.O. Box 200523  
Helena, MT 59620-0523  
Telephone: 406-841-2776  
E-mail: [dacole@mt.gov](mailto:dacole@mt.gov)

**For the City:**

Carolyn Schmoeckel, Clerk-Treasurer (or successor)  
City of Malta  
P.O. Box 1300  
Malta, Montana 59538  
Telephone: 406-654-5300 (GPDM) or 406-654-1251 (Schmoeckel)  
E-mail: [dinosaur@mtintouch.net](mailto:dinosaur@mtintouch.net) or [legalcon@mtintouch.net](mailto:legalcon@mtintouch.net) (Schmoeckel)

**19. INTEGRATION.** This Agreement and any attachments hereto contain the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding.

**IN WITNESS WHEREOF**, the parties have caused these presents to be duly executed:

\_\_\_\_\_  
Mayor Byron D. Ereaux  
City of Malta

\_\_\_\_\_  
Date

\_\_\_\_\_  
Anthony J. Preite, Director  
Montana Department of Commerce

\_\_\_\_\_  
Date

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